

HOUSE BILL No. 1296

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2-128.5; IC 12-15.

Synopsis: Medicaid liens and services. Authorizes the office of Medicaid policy and planning (office) to: (1) place a lien on a Medicaid recipient's real property if the office determines that the recipient will not return to live in the property; and (2) enforce the lien if the property is sold or upon the death of the recipient. Provides certain exemptions. Permits the office to recover from a deceased Medicaid recipient nonprobate assets in which the recipient has an interest at death but that do not pass through the probate estate. Requires the office to apply for approval to: (1) amend the state Medicaid plan to include personal care services; (2) amend the aged and disabled waiver to modify income eligibility requirements to include spousal impoverishment protection provisions; and (3) apply for a Medicaid waiver to fund adult foster care. Requires the office of the secretary of family and social services to: (1) reduce the number of individuals on a waiting list compiled by the area agencies on aging for services offered under the community and home options to institutional care for the elderly and disabled (CHOICE) program before July 1, 2005; and (2) amend any Medicaid waiver for home and community based services so that an eligible individual receives services within 90 days after being determined eligible for the services.

Effective: Upon passage; July 1, 2002; January 1, 2003.

Welch, Crawford, Crosby

January 14, 2002, read first time and referred to Committee on Ways and Means.



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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1296

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-7-2-128.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2003]: **Sec. 128.5. "Medical institution",**
4 **for purposes of IC 12-15-8.5, has the meaning set forth in**
5 **IC 12-15-8.5-1.**

6 SECTION 2. IC 12-15-8.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JANUARY 1, 2003]:

9 **Chapter 8.5. Liens on Real Property of Medicaid Recipients**

10 **Sec. 1. As used in this chapter, "medical institution" means any**
11 **of the following:**

12 **(1) A hospital.**

13 **(2) A nursing facility.**

14 **(3) An intermediate care facility for the mentally retarded.**

15 **Sec. 2. When the office, in accordance with 42 U.S.C. 1396p,**
16 **determines that a Medicaid recipient who resides in a medical**
17 **institution cannot reasonably be expected to be discharged from a**

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1 medical institution and return home, the office shall obtain a lien
 2 on the Medicaid recipient's real property for the cost of all
 3 Medicaid expenditures made on behalf of the recipient.

4 **Sec. 3.** The office may not obtain a lien under this chapter if any
 5 of the following persons lawfully reside in the home of the
 6 Medicaid recipient who resides in the medical institution:

7 (1) The Medicaid recipient's spouse.

8 (2) The Medicaid recipient's child who is:

9 (A) less than twenty-one (21) years of age; or

10 (B) disabled as defined by the federal Supplemental
 11 Security Income program.

12 (3) The Medicaid recipient's sibling who has an ownership
 13 interest in the home and who has lived in the home
 14 continuously beginning at least twelve (12) months before the
 15 recipient was admitted to the medical institution.

16 **Sec. 4.** Before obtaining a lien on a Medicaid recipient's real
 17 property under this chapter, the office shall notify in writing the
 18 Medicaid recipient, the Medicaid recipient's guardian, the
 19 Medicaid recipient's attorney in fact, or the Medicaid recipient's
 20 authorized representative, of the following:

21 (1) The office's determination that the Medicaid recipient
 22 cannot reasonably be expected to be discharged from the
 23 medical institution.

24 (2) The office's intent to impose a lien on the Medicaid
 25 recipient's home.

26 (3) The Medicaid recipient's right to a hearing under
 27 IC 12-15-28 upon the Medicaid recipient's request regarding
 28 whether the requirements for the imposition of a lien are
 29 satisfied.

30 **Sec. 5.** (a) The office shall obtain a lien under this chapter by
 31 filing a notice of lien with the recorder of the county in which the
 32 real property subject to the lien is located. The notice shall include
 33 the following:

34 (1) The name and place of residence of the individual against
 35 whose property the lien is asserted.

36 (2) A legal description of the real property subject to the lien.

37 (b) Upon the office's request, the county auditor or assessor of
 38 a county shall furnish the office with the legal description of any
 39 property in the county registered to the recipient.

40 (c) The office shall file one (1) copy of the notice of lien with the
 41 county office of family and children in the county in which the real
 42 property is located. The county office of family and children shall

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1 retain a copy of the notice with the county office's records.

2 (d) The office shall provide one (1) copy of the notice of lien to
3 the recipient whose real property is affected.

4 Sec. 6. (a) Beginning on the date on which a notice of lien is
5 recorded in the office of the county recorder under section 5 of this
6 chapter, the notice of lien:

- 7 (1) constitutes due notice of a lien against the Medicaid
8 recipient's real property for any amount then recoverable and
9 any amount that becomes recoverable under this article; and
10 (2) gives a specific lien in favor of the office.

11 (b) The lien continues from the date of filing the lien until the
12 lien is satisfied or released.

13 Sec. 7. The office may bring proceedings in foreclosure on a lien
14 arising under this chapter during the lifetime of the Medicaid
15 recipient if the Medicaid recipient or a person acting on behalf of
16 the Medicaid recipient sells the property.

17 Sec. 8. (a) The office may not enforce a lien under this chapter
18 if the Medicaid recipient is survived by any of the following:

- 19 (1) The recipient's spouse.
20 (2) The recipient's child who is:
21 (A) less than twenty-one (21) years of age; or
22 (B) disabled as defined by the federal Supplemental
23 Security Income program.

24 (b) The office may not enforce a lien under this chapter as long
25 as any of the following individuals reside in the home:

- 26 (1) The recipient's child of any age if the child:
27 (A) resided in the home for at least twenty-four (24)
28 months before the Medicaid recipient was admitted to the
29 medical institution;
30 (B) provided care to the Medicaid recipient that delayed
31 the Medicaid recipient's admission to the medical
32 institution; and
33 (C) has resided in the home on a continuous basis since the
34 date of the individual's admission to the medical
35 institution.

- 36 (2) The Medicaid recipient's sibling who has an ownership
37 interest in the home and who has lived in the home
38 continuously beginning at least twelve (12) months before the
39 Medicaid recipient was admitted to the medical institution.

40 Sec. 9. (a) The office shall release a lien imposed under this
41 chapter within ten (10) business days after the county office of
42 family and children receives notice that the Medicaid recipient:

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1 (1) was discharged from the medical institution; and

2 (2) is living in the home.

3 (b) The county recorder shall waive the filing fee for the filing
4 of a release made under this section.

5 SECTION 3. IC 12-15-9-0.5 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 0.5. As used in this
7 chapter, "estate" includes:

8 (1) all real and personal property and other assets included within
9 an individual's probate estate; and

10 (2) any other real and personal property and other assets in
11 which the individual had legal title or an interest at the time
12 of death, including assets conveyed to a survivor, heir, or
13 assign of the deceased individual through any of the following:

14 (A) Joint tenancy.

15 (B) Tenancy in common.

16 (C) Survivorship.

17 (D) Life estate.

18 (E) Trust.

19 (F) Any other arrangement.

20 SECTION 4. IC 12-15-28-1 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. An applicant
22 for or a recipient of Medicaid may appeal to the office if one (1) of the
23 following occurs:

24 (1) An application or a request is not acted upon by the county
25 office within a reasonable time after the application or request is
26 filed.

27 (2) The application is denied.

28 (3) The applicant or recipient is dissatisfied with the action of the
29 county office.

30 (4) The recipient is dissatisfied with a determination made by
31 the office under IC 12-15-8.5.

32 SECTION 5. [EFFECTIVE UPON PASSAGE] (a) As used in this
33 SECTION, "office" refers to the office of Medicaid policy and
34 planning established by IC 12-8-6-1.

35 (b) As used in this SECTION, "personal care services" has the
36 meaning set forth in 42 U.S.C. 1396d(a)(24).

37 (c) Before July 1, 2002, the office shall apply to the United States
38 Department of Health and Human Services for approval to amend
39 the state Medicaid plan to include personal care services.

40 (d) The office may not implement the amended state Medicaid
41 plan until the office files an affidavit with the governor attesting
42 that the proposed amendment to the state Medicaid plan applied

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for under this SECTION was approved. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the proposed amendment is approved.

(e) If the office receives approval of the proposed amendment to the state Medicaid plan under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (d), the office shall implement the amendment not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

SECTION 6. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "waiver" refers to the Medicaid aged and disabled waiver (42 U.S.C. 1396 et seq.).

(c) Before September 1, 2002, the office shall seek approval under 42 U.S.C. 1396 et seq. from the United States Department of Health and Human Services to amend the waiver to modify income eligibility requirements to include spousal impoverishment protection provisions under 42 U.S.C. 1396r-5.

(d) The office may not implement the waiver amendments until the office files an affidavit with the governor attesting that the federal waiver amendments applied for under this SECTION are in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver amendments are approved.

(e) If the United States Department of Health and Human Services approves the waiver amendments requested under this SECTION and the governor receives the affidavit filed under subsection (d), the office shall implement the waiver amendments not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

SECTION 7. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) Before July 1, 2002, the office shall apply to the United States Department of Health and Human Services for a Medicaid waiver to fund adult foster care services.

(c) The office may not implement the waiver amendments until

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the office files an affidavit with the governor attesting that the federal waiver amendments applied for under this SECTION are in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver amendments are approved.

(d) If the United States Department of Health and Human Services approves the waiver amendments requested under this SECTION and the governor receives the affidavit filed under subsection (c), the office shall implement the waiver amendments not more than sixty (60) days after the governor receives the affidavit.

(e) The office may adopt rules under IC 4-22-2, including rules that regulate adult foster care services provided by a waiver under this SECTION, that are necessary to implement this SECTION.

(f) This SECTION expires July 1, 2008.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of the secretary of family and social services established by IC 12-8-1-1.

(b) Before July 1, 2005, the office shall reduce the number of individuals on a waiting list compiled by the area agencies on aging for services offered under the community and home options to institutional care for the elderly and disabled (CHOICE) program established under IC 12-10-10 by one hundred percent (100%) of the individuals who entered the waiting list before April 1, 2005.

(c) After June 30, 2005, an eligible individual under the CHOICE program shall not:

- (1) wait on a waiting list for services for more than ninety (90) days; and
- (2) be denied services because of funding shortages for the program.

(d) Before July 1, 2005, the office shall seek approval from the United States Department of Health and Human Services to amend any Medicaid waiver for home and community based services so that an eligible individual receives services within ninety (90) days after being determined eligible for the services.

(e) The office may not implement the waiver amendment until the office files an affidavit with the governor attesting that the federal waiver amendments applied for under this SECTION are in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver amendments are approved.

(f) If the United States Department of Health and Human

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1 Services approves the waiver amendments requested under this
2 SECTION and the governor receives the affidavit filed under
3 subsection (e), the office shall implement the waiver amendments
4 not more than sixty (60) days after the governor receives the
5 affidavit.

6 (g) The reduction of the number of individuals on the waiting
7 list required under this SECTION shall not be achieved by
8 reducing services or changing eligibility determination.

9 (h) The office may adopt rules under IC 4-22-2 necessary to
10 implement this SECTION.

11 SECTION 9. An emergency is declared for this act.

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